

FILE

DECISION – WALPOLE ZONING BOARD OF APPEALS CASE NO. 15-17

APPLICANT

Roy F. Lee

LOCATION OF PROPERTY INVOLVED

20 Gay Avenue

Walpole Assessors Map: 18; Lot 51, Residence B Zone.

APPLICATION

A **Special Permit** under Section 9.4.A of the Zoning By-Laws for the proposed expansion of a non-conforming existing single-family dwelling.

On June 21, 2017 a Public Hearing was held in the Main Meeting Room of Town Hall for the purpose of receiving information and voting upon a decision as to the granting of the Special Permit requested.

The following members were present and voting:

Matthew Zuker, Chairman
Craig W. Hiltz, Clerk
Susanne Murphy, Member
Robert Fitzgerald, Associate Member

A motion was made by Craig Hiltz, seconded by Robert Fitzgerald, to grant a **Special Permit** under Section 9.4.A of the Zoning By-Laws to allow the proposed expansion of a non-conforming existing single-family dwelling at 20 Gay Avenue, Walpole, MA 02081.

The vote was **(4-0-0) in favor** (Zuker, Hiltz, Murphy and Fitzgerald voting); therefore the application for a **Special Permit** is hereby **granted, subject to the following conditions:**

CONDITIONS:

1. The onsite septic system shall be flagged prior to construction of the proposed deck to prevent any heavy materials or equipment from damaging the onsite septic system.
2. The location of the existing water service must be marked in order to lessen the chances that it will be damaged or built over during construction.
3. The proposed deck shall be constructed according to the plans submitted at the public hearing on June 21, 2017.

REASONS FOR DECISION

The Board finds that the proposed expansion of a non-conforming existing single-family dwelling requires a **Special Permit** under Section 9.4.A. It is the further finding of the Board that the applicant was able to meet the requirements of Section 9.4.A of the Zoning Bylaw in that:

As part of this finding, the Board hereby makes specific findings pursuant to Section 9.4.A of the Zoning Bylaw and M.G.L. Chapter 40A, Section 6, Paragraph 1 that:

- The proposed construction is of a deck to the direct rear of a single-family dwelling which will not change the nature of the nonconformity. The nature of the proposed single-family use will remain unchanged as well. The Applicant has provided a letter of support from an abutting and nearby property. The lot shape is extremely narrow, limiting the ability to construct a deck connected to the house and at the same time away from the side yard setback. Based on these factors, the Board finds that the expansion of the existing non-conforming single-family dwelling on the property will not be substantially more detrimental to the neighborhood than the existing structure and use.
- The proposed construction of a deck for the single-family residential dwelling is reasonable and appropriate for the neighborhood.

FURTHER FINDINGS

It is the finding of the Board that the applicant was able to meet the requirements of Section 2.2.B of the Zoning Bylaws, which requires that:

(1) Prior to granting a special permit, the SPGA shall make a finding and determination that the proposed use, building, structure, sign, parking facility or other activity which is the subject of the application for the special permit:

(a) Does and shall comply with such criteria or standards as shall be set forth in in the section of this Bylaw which refers to the granting of the requested special permit;

As discussed above, the proposed work complies with the special permit provisions of Section 9.4.A of the Zoning By-law.

(b) Shall not have vehicular and pedestrian traffic of a type and quantity so as to adversely affect the immediate neighborhood;

The Board finds that the proposed deck will not significantly increase vehicular or pedestrian traffic and this requirement is therefore met.

(c) Shall not have a number of residents, employees, customers, or visitors so as to adversely affect the immediate neighborhood;

The Board finds that the proposed expansion of a single-family dwelling will not result in a significant increase in the number of residents or visitors that would adversely affect the immediate neighborhood (employees and customers do not apply to this residential site) and this requirement is therefore met.

(d) Shall comply with the dimensional requirements applicable to zoning district in which the premises is located, including, without limitation, the applicable lot coverage and buffer zone requirements in Section 5-G;

The Board finds that the proposed deck will be constructed 7.26' from the side yard where as the pre-existing non-conforming house is 5.07' from the side yard.. There are no buffer zone requirements associated with this use.

(e) Shall not be dangerous to the immediate neighborhood of the premises through fire, explosion, emission of wastes, or other causes;

The Board finds that single-family residential uses are not known to be dangerous due to fire, explosion, emission of wastes, or other causes. As such, the Board finds that this criterion is met.

(f) Shall not create such noise, vibration, dust, heat, smoke, fumes, odor, glare or other nuisance or serious hazard so as to adversely affect the immediate neighborhood;

The Board finds that the deck is located to the rear of the existing house and further from the side yard that its use will not create more substantial noise, vibration, dust, heat, smoke, fumes, odor, glare or other nuisance so as to adversely affect the immediate neighborhood. Additionally, the neighbor that the deck will be closest to has written in favor of the proposed construction. As such, the Board finds that this criterion is met.

(g) Shall not adversely effect the character of the immediate neighborhood; and

The Board finds that the property in question lies within an existing single-family residential neighborhood and that the proposed structure is reasonable for the neighborhood. The Board therefore finds that this criterion is met.

(h) Shall not be incompatible with the purpose of the zoning Bylaw or the purpose of the zoning district in which the premises is located.

The Board finds that the proposed single family residential structure is appropriate for the Residence B zone, where single-family residential uses are allowed by right. As such, the Board finds that this criterion is met.

* * * * *

Consistency: This decision is consistent with purpose and intent of the Zoning Bylaw.

The grant of relief under this decision is limited to the relief expressly granted hereunder; and any other relief sought is hereby denied.

* * * * *

Said Special Permit is granted pursuant to Massachusetts General Laws c. 40A, s.9 which provides in pertinent part as follows:

"...special permits granted under this section shall lapse within a specified period of time, not more than two years, which shall not include such time required to pursue or await the determination of an appeal referred to in section seventeen, from the grant thereof, if a substantial use thereof has not sooner commenced except for good cause or, in the case of permit for construction, if construction has not begun by such date except for good cause."

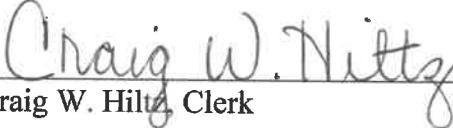
Massachusetts General Laws c. 40A, s. 11. provides in pertinent part as follows:

"A special permit, or any extension, modification or renewal thereof, shall not take effect until a copy of the decision bearing the certification of the city or town clerk that 20 days have elapsed after the decision has been filed in the office of the city or town clerk and either that no appeal has been filed or the appeal has been filed within such time, or if it is a special permit which has been approved by reason of the failure of the permit

granting authority or special permit granting authority to act thereon within the time prescribed, a copy of the application for the special permit-accompanied by the certification of the city or town clerk stating the fact that the permit granting authority or special permit granting authority failed to act within the time prescribed, and whether or not an appeal has been filed within that time, and that the grant of the application resulting from the failure to act has become final, is recorded in the registry of deeds for the county and district in which the land is located and indexed in the grantor index under the name of the owner of record or is recorded and noted on the owner's certificate of title. The person exercising rights under a duly appealed special permit does so at risk that a court will reverse the permit and that any construction performed under the permit may be ordered undone. This section shall in no event terminate or shorten the tolling, during the pendency of any appeals, of the 6 month periods provided under the second paragraph of section 6. The fee for recording or registering shall be paid by the owner or applicant."

MASSACHUSETTS GENERAL LAWS c. 40A, s. 15 PROVIDES THAT APPEALS FROM A DECISION OF A BOARD OF APPEALS SHALL BE MADE PURSUANT TO SECTION 17 OF c 40A AND SHALL BE FILED WITHIN TWENTY DAYS AFTER THE DATE OF FILING OF THE NOTICE OF DECISION IN THE OFFICE OF THE CITY OR TOWN CLERK.

WALPOLE ZONING BOARD OF APPEALS


 Craig W. Hiltz, Clerk

CH/am

cc:	Town Clerk	Engineering	Planning Board	Abutters
	Board of Selectmen	Building Inspector	Conservation Commission	Applicant

This decision was made on June 21, 2017 and filed with the Town Clerk on June 29, 2017.